IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 5268 of 2005(B)

PETITIONER:

T.LATHA, TEACHER,
MATTANNUR HIGHER SECONDARY SCHOOL,
KANNUR DISTRICT.

BY ADV. SRI.M.CHATHUKUTTY NAMBIAR
SRI.RAJAKRISHNAN. K

RESPONDENTS:

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1. THE DISTRICT EDUCATIONAL OFFICER,
THALASSERY.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
STATE OF KERALA, THIRUVANANTHAPURAM.

3. THE STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL
EDUCATION (J) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

4. THE MANAGER,
MATTANNUR HIGHER SECONDARYA SCHOOL,
KANNUR DISTRICT,.

5. R.BINDHU, HIGH SCHOOL ASSISTANT,
MATTANNUR HIGHER SECONDARY SCHOOL,
KANNUR DISTRICT.

6. P.V.SUDHA, MATTANNUR HIGEHR SECONDARY
SCHOOL, KANNUR DISTRICT.

7. BINDHU K.,
MATTANNUR HIGHER SECONDARY SCHOOL,
KANNUR DISTRICT.

8. RAJITHA K.,
MATTANNUR HIGHER SECONDARY SCHOOL,
KANNUR DISTRICT.

9. BHAGYA LAKSHMI A.K.,
MATTANUR HIGEHR SECONDARY SCHOOL,
KANNUR DISTRICT.

10. PREETHA,
UPPER PRIMARY SCHOOL ASSISTANT,
MATTANNUR HIGER SECONDARY SCHOOL,
KANNUR DISTRICT.

11. SMT.K.SHEEBA RAJAN,
UPPER PRIMARY SCHOOL ASSISTANT,
MATTANNUR HIGHER SECONDARY SCHOOL,
KANNUR DISTRICT.

BY SR.GOVERNMENT PLEADER SMT. M.R. SREELATHA
SRI.RENI ANTO KANDAMKULATHY
SRI.CIBI THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF THE APPOINTMENT ORDER.

EXT.P2: COPY OF THE APPEAL FILED BEFORE THE R2.

EXT.P3: COPY OF THE ORDER IN APPEAL DATED 1.11.2003.

EXT.P4: COPY OF THE MEMO DATED 17.11.2003.

EXT.P5: COPY OF THE ORDER IN APPEAL DATED 17.2.2004.

EXT.P6: COPY OF THE JUDGMENT IN W.P.(C)NO.4283/2004 DATED 6.4.2004.

EXT.P7: COPY OF THE REVISION PETITIN FILED BEFORE THE GOVERNMENT.

EXT.P8: COPY OF THE JUDGMENT IN W.P.(C)23677/2004 DATED 11.8.2004.

EXT.P9: COPY OF THE REVISION ORDER BY THE GOVERNMENT DATED 31.12.2004

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.5268 OF 2005

Dated this the 26th day of September, 2007

JUDGMENT

The petitioner was originally appointed in the school managed by the 4th respondent as UPSA in a temporary vacancy on 2.8.95 and thereafter, permanently with effect from 7.6.96 onwards. She was promoted as HSA with effect from 15.10.98. While she was so continuing in service, pursuant to staff fixation for the year 2002-2003 there was division fall resulting in reduction of four posts of HSA. However, there was retirement of two teachers also and as a result two teachers became surplus. In view of the Government orders to the effect that for the purpose of retaining teachers in the case of division fall, the teacher-student ratio of 1:40 can be applied, the 5th respondent who was directly recruited as HSA was retained. But the petitioner, who was senior to the 5th respondent in the cadre of HSA was reverted as UPSA. The petitioner challenged the same in a revision before the Director of Public Instructions. The Director of Public Instructions held that the benefit of 1:40 ratio

as per the Government orders enforced could be applied for the year 2002-03 only in respect of teachers, who were actually enjoying that benefit for the year 2001-02. The petitioner was not enjoying that benefit for the year 2001-02 since for that year there was vacancy for the petitioner whereas Smt. Bindu, the 5th respondent herein was retained in the school for 2001-02 enjoying the benefit of 1:40 ratio. Holding that as per the Government orders in force only those teachers who were enjoying the benefit of 1:40 teacher - student ratio for the year 2001-02 alone would be entitled to the benefit for the year 2002-03, the petitioner was reverted whereas 5th respondent was retained. The petitioner's revision before the Government in this regard was rejected by Ext.P9 order. The petitioner is challenging Exts.P3, P5 and P9 orders in this regard in this writ petition.

2. The petitioner's contention is that the position that the benefit of 1:40 teacher-student ratio would be applicable only to those who were enjoying that benefit for the year 2001-02 was not accepted by this court and by judgment in **Paveen Vs. State of Kerala (2004(3)KLT 68)** this Court held that the same is a standing order and would be applicable

to subsequent years also. The petitioner also points out that pursuant to the said judgment, the Government had also issued a Circular No.11/J2/2005/G.Edn. dated 2.5.05 accepting the legal position and held that it would be applicable to teachers who rendered surplus on account of division fall in the years 2003-04 and 2004-05 also.

3. Of course, the Government pleader would point out that even assuming that in view of the said decision, the petitioner is entitled to the benefit of 1:40 teacher-student ratio for retention as HSA, in view of G.O.(P)No.4/2005/G.Edn. Dated 4.1.05, the same would not be applicable for accommodating the teachers facing reversion and would be applicable only for accommodating teachers facing retrenchment. The argument is that the petitioner having been promoted as HSA is liable to be reverted whereas the 5th respondent being a direct recruit as HSA faces retrenchment and therefore is entitled to be retained applying 1:40 teacher student ratio.

4. I have considered the rival contentions in detail. I am satisfied that in view of the decision in **Paveen's case** as also the circular of the Government the impugned orders

cannot be sustained. Therefore even though the petitioner was not retained enjoying the benefit of 1:40 ratio for the year 2001-02, she also would be eligible for the said benefit while considering her case for reversion during 2002-03. Therefore, the impugned orders are liable to be quashed. In so far as the contention of the Government pleader that in view of G.O.(P) No.4/05 the petitioner cannot be given that benefit as her's is only a case of reversion, I find that, that Government order came into force only on 4.1.05 whereas the petitioner's case relates to the period prior to that. Therefore, going by the Government orders in force at the relevant time, for the purpose of reversion also consequent to division fall, the teacher-student ratio of 1:40 has to be applied.

5. Even otherwise there is a basic inequity in the situation. Petitioner's junior as HSA is being retained as HSA whereas the petitioner is being reverted although both are surplus. Consequently even if the petitioner is later promoted as HSA she would rank as junior to the 5th respondent which is an anomalous situation which has to be avoided to render justice.

6. In the above circumstances, Exts.P3, P5 and P9 are quashed and the 1st respondent is directed to pass fresh orders retaining the petitioner as a High School Assistant for the year 2002-03 applying the teacher student ratio of 1:40. Consequential monetary benefits also shall be disbursed. This shall be done within a period of one month from the date of receipt of a copy of this judgment. Needless to say the petitioner shall rank senior to 5th respondent in the cadre of HSA.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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